IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.4735 of 2000

Dated: 03-10-2007

Between:

M/s. Surya Fertilizers, Patnam Bazaar, Guntur,
rep. by its Proprietor Ch. Suryanarayana Rao.

... Petitioner

and

1. The Joint Director of Agriculture,
   Guntur,
   Guntur District and another.

... Respondents

ORDER:

Questioning the proceedings of the second respondent – District Collector, Guntur in D.Dis.Fert.I.1810/95, dated 31-03-1999 the present writ petition has been filed for a consequential direction to the first respondent – Joint Director of Agriculture to pay a sum of Rs.8,23,435-20 ps. to the petitioner.

2. Facts, in brief, are: Petitioner, M/s. Surya Fertilizers, is a dealer in fertilizers. As per the Fertilizer Control Order, 1985, the Government is empowered to fix maximum price at which the fertilizers have to be sold by any dealer, manufacturer or pool-handling agent by issuing notification to that effect. The dealers sell the fertilizers and they will be given subsidy to reimburse the deficit of the actual price. Be that as

it may, the Government of India issued notification dated 24-08-1992 controlling the phosphatic and potassic fertilizers. However, the Government of Andhra Pradesh issued a Telex message dated 26-08-1992 to the concerned agriculture officers to see that the said decontrolled fertilizers are sold at controlled prizes existing prior to decontrol. The agricultural officials forced all the fertilizers dealers to sell the decontrolled fertilizes which were even purchased subsequent to the notification. Questioning the said action,
on an earlier occasion, petitioner herein approached this Court and filed W.P.No.12611 of 1992 and this Court while disposing a batch of writ petitions, by a common order dated 11-02-1997, directed the Collector to conduct an enquiry pinpointing only on the issue as to whether the decontrolled fertilizers have in fact been purchased by the petitioners on 25-08-1992 and thereafter arrive at the difference, if any, amount over and above are paid. In the said judgment, it is also observed that the decontrolled fertilizers mentioned were purchased by the petitioners therein before they were decontrolled i.e. prior to 25-08-1992, then they are not entitled for any refund.

3. The facts are not in dispute.

4. Heard learned counsel for the parties.

5. The Government of India issued proceedings on 25-08-1992, according to which the fertilizers are decontrolled with effect from that date. By virtue of the said decontrol, the rates of the fertilizers have come down. However, according to the petitioner though the said stocks were distributed by the manufacturer to the distributor at the old rates and the distributor sold the same to the petitioner in the old rates by virtue of the said decontrol, he is made to sell the stocks at the decontrolled prices which came into effect on 25-08-1992 and hence seek reimbursement.

6. In fact, in the counter affidavit it is clearly stated that the first respondent – Collector has conducted an enquiry with the second respondent – Joint Director of Agriculture and also noticed that the dealer has purchased the stocks on 25-08-1992 from the distributor

M/s. Jayalakshmi Fertilizers, Chebrolu. Further, the manufacturer M/s. Spic Limited, Madras also in their letter dated 05-08-1998 have clearly stated that the stocks supplied to the dealers in Guntur District on 25-08-1992 is in old rates. Further, it is also stated that the manufacturer, who sold the controlled DAP on old rates was given subsidy and the same was passed on to the Distributor (wholesaler), who in turn sold certain stocks to the petitioner.

7. When once subsidy is given to the manufacturer and the same is passed on to the distributor and if the said subsidy is not passed on to the dealer i.e. the petitioner herein and if he is made to sell the stocks that were supplied on 25-08-1992 at the decontrolled prices, in my considered view, the petitioner's remedy is elsewhere but not by filing this writ petition seeking refund. It is ultimately for the convenience of the customers,

the decontrol of fertilizers has been introduced by the Central Government and subsidy is also given to the manufacturer as well as the distributor and if the same is not passed on to the petitioner, who is a dealer, probably he may have to question the said action of the distributor for not extending the subsidy to him and for refund of the extra money that was paid by him, for which a suit is maintainable. No doubt, the petitioner is at loss, but this Court sees that the relief sought for in this writ petition cannot be granted.

8. Accordingly, the writ petition is dismissed. No costs.

JUSTICE GOPALAKRISHNA TAMADA

Dt.03-10-2007
GLV